IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

DATE OF DECISION: July 20, 2007

Parties Name

Jasmel Singh

..APPELLANT

VERSUS

Kaur Singh and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH

PRESENT: Mr. Adarsh Jain,
Advocate, for the appellant.

JASBIR SINGH, J. (oral)

JUDGMENT:

CM No. 2223-C of 2007:

This application has been filed under Section 5 of the Limitation Act for condonation of 41 days' delay in filing the application for restoration. Application is accompanied by an affidavit of the counsel. In view of the reasons given in the application, it is allowed and delay in filing the application for restoration is condoned.

CM No. 2224-C of 2007:

This application has been filed under Order 9 Rule 9 read with Section 151 CPC for restoration of the appeal, which was dismissed in default on January 19, 2006. Application is accompanied by an affidavit of

the counsel. In view of the reasons given in the application, it is allowed and order dated January 19, 2006, stands recalled. Appeal is restored to its original number. On request made by counsel for the appellant, appeal is taken on board for hearing.

RSA No. 1707 of 2005:

It is apparent from the records that the appellant – plaintiff filed a suit for permanent injunction with regard to property/house, description of which was given in the heading of the plaint. It was his specific averment that he was in possession of that house. Upon notice, respondents appeared and put in written-statement denying his possession over the property in dispute. Issues were framed. Parties led evidence and on conclusion thereof, the trial Court dismissed the suit by opining as under:

> "After hearing the arguments and perusing the record of the case, this Court is of the view that the plaintiff has filed the present suit against the defendants for a decree for permanent injunction restraining the defendants from interfering into his actual and physical possession over house built on land measuring 22 karams x 14 karams. From the perusal of report of Local Commission Ex. P1 the house in possession is approximately 60 feet x 60 feet bounded as on east-house of Balbir Singh etc., west-public street, north- vacant plot of Jaggar Singh and South – house of Jaggar Singh alias Jagtar Singh but in the head note of the plaint the suit property i.e. One house built on land measuring 22 Karams x 14 karams bounded as on North and South – vacant plot of Jagtar Singh, East- house of Hargobind Singh, West – open street. The

specification of the house and boundaries shown in the head note does not tally with the boundaries and signs given in the Local Commission report which is only the document placed on record by the plaintiff to prove his possession. The other documents Ex. P3 to Ex. P6 electricity bills and ration card do not show that the plaintiff is in possession of the same house which is mentioned in the plaint. The plaintiff has to prove his own case and cannot take the benefit of the deficiencies of the defendants and this court is of the view that the plaintiff has failed to prove that he is in the possession of the house which is mentioned in the plaint. The authorities relied upon by the ld. Counsel for the plaintiff 1998(2) SLJ 1413 and 2001(2) LJR 256 (supra) are not applicable to the facts and circumstances of the present case.

Appellant also lost in appeal. Both the Courts below have found it as a matter of fact that the plaintiff has miserably failed to prove his possession over the house in dispute. Testimony of PW2 has rightly been discarded as the same has failed to inspire confidence. No law point has been made out.

Counsel for the appellant has also failed to make out any case for interference. Dismissed.

July 20, 2007. ( Jasbir Singh )
DKC Judge